



1-1-2011

The Human Right of Sanitation for All: A Study of India

Rebecca M. Coleman

Pacific McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/globe>

 Part of the [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Rebecca M. Coleman, *The Human Right of Sanitation for All: A Study of India*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 267 (2011).

Available at: <https://scholarlycommons.pacific.edu/globe/vol24/iss1/12>

This Comments is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Global Business & Development Law Journal by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

The Human Right of Sanitation for All: A Study of India

*Rebecca M. Coleman**

TABLE OF CONTENTS

I. INTRODUCTION	268
II. THE IMPORTANCE OF SANITATION	270
A. <i>Definition of Sanitation</i>	270
B. <i>Lack of Access to Sanitation</i>	271
C. <i>Necessity of Sanitation</i>	271
1. <i>Health</i>	272
2. <i>Safety</i>	273
3. <i>Education</i>	274
4. <i>Economic Impact</i>	275
5. <i>Environmental Impact</i>	276
III. THE RIGHT TO BASIC SANITATION	278
A. <i>General Comment 15</i>	278
B. <i>U.N. Resolutions and Conventions</i>	280
C. <i>National Recognition of Sanitation</i>	282
D. <i>Millennium Development Goals</i>	283
IV. THE CURRENT SANITATION SITUATION IN INDIA	284
A. <i>Sanitation in India</i>	284
B. <i>Legal Recognition of a Right to Adequate Sanitation in India</i>	285
1. <i>Constitutional Basis</i>	285
2. <i>Judicial Basis</i>	286
C. <i>India's Response to the Sanitation Crisis</i>	288
1. <i>Five Year Plans</i>	288
2. <i>Central Rural Sanitation Programme</i>	289
3. <i>Total Sanitation Campaign</i>	290
4. <i>Nirmal Gram Puraskar</i>	290

* J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2012; B.A., Political Studies, The Master's College, 2008. I am tremendously grateful to my family and friends for their support and encouragement, which made this Comment possible.

5. Criticisms of the Total Sanitation Campaign and the Nirmal Gram Puraskar	291
V. KEY ELEMENTS FOR IMPROVING SANITATION IN INDIA.....	293
A. Recognition of the Right to Sanitation	293
B. Clear Definition of the Right to Sanitation.....	295
C. Change Through Information.....	296
1. Need for Information	296
2. Hindrances of Information.....	297
3. Recommendations to Improve Information.....	298
D. Monitoring the Nirmal Gram Puraskar	299
VI. CONCLUSION.....	301

Sanitation, more than many other human rights issue, evokes the concept of human dignity; consider the vulnerability and shame that so many people experience every day when, again, they are forced to defecate in the open, in a bucket or a plastic bag. It is the indignity of this situation that causes the embarrassment.¹

I. INTRODUCTION

The sun had not yet risen by the time Meera Devi hesitantly ventured out of her one-room, mud-brick home for the half-mile trek to the vegetable patch she frequented every morning.² Avoiding daylight, Meera instead chose the cloak of darkness to hide the embarrassment of defecating in the open.³ It was a challenge to find a spot not previously soiled by neighbors or in the view of on-looking men.⁴ This is an all too familiar reality in India,⁵ while those in developed countries enjoy the convenience and dignity of a clean, private bathroom.⁶ Although access to sanitation is recognized internationally as a human right in conjunction with the right to water,⁷ it is far from satisfactory in its

1. Pablo Solon, Ambassador of the Plurinational State of Bol., Speech before the General Assembly of the United Nations: The Human Right to Water and Sanitation (July 28, 2010), *available at* <http://www.canadians.org/water/documents/Solon-RTW-UN-28-07-10.pdf>.

2. Jason Gale, *India Failing to Control Open Defecation Blunts Nation's Growth*, BLOOMBERG (Mar. 3, 2009, 3:00 PM), http://bloomberg.com/apps/news?sid=aErNiP_V4RLc&pid=newsarchive.

3. *Id.*

4. *Id.*

5. *Id.*

6. See generally Mandy Adwell, *Gates Foundation Aims to Reinvent the Toilet*, THE 9 BILLION (Aug. 4, 2011), <http://www.the9billion.com/2011/08/04/gates-foundation-aims-to-reinvent-the-toilet/>.

7. U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 15: The Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C. 12/2002/11 (Nov. 26, 2002) [hereinafter *General Comment 15*]; Solon, *supra* note 1.

implementation.⁸ Roughly 2.6 billion of the world's population still suffer from a lack of sanitation.⁹ Unsanitary conditions risk the health, safety, and education of these individuals, as well as each country's economy and the world's environment.¹⁰ There is no time to waste in guarding against these dangers by improving the sanitation situation.¹¹

Despite various international commitments, improved sanitation is still a distant goal.¹² India is among the countries struggling to improve this basic necessity.¹³ Recognizing the importance of providing adequate sanitation, India implemented several programs, including the Central Rural Sanitation Programme,¹⁴ the Total Sanitation Campaign,¹⁵ and a program that provides a cash award for communities with significant improvements.¹⁶ Nevertheless, India's commitment has proved to be unsuccessful in significantly improving its sanitation crisis.¹⁷ Hence, it is crucial to identify India's shortcomings in order to successfully motivate a sustainable improvement in sanitation. It is time to make sanitation a priority in India.¹⁸

This Comment begins by discussing the importance of access to adequate sanitation facilities. Part III addresses the legal foundation of the right to sanitation including international agreements, United Nations ("U.N.") resolutions, and domestic laws and policy. The lack of sanitation in India, how India has responded to the need for sanitation, and why India's various programs and policies have failed to significantly improve the situation are evaluated in Part IV of this Comment. The Comment concludes with a discussion of key recommendations for a successful campaign to combat inadequate sanitation.

8. Solon, *supra* note 1.

9. *Id.*

10. See Gale, *supra* note 2.

11. Solon, *supra* note 1.

12. See U.N. DEP'T OF ECON. & SOC. AFFAIRS, THE MILLENNIUM DEVELOPMENT GOALS REPORT 2010, at 60-61, U.N. Sales No. E.10.I.7 (2010), available at <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf> [hereinafter MDG REPORT].

13. CENT. STATISTICAL ORG., MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, GOV'T OF INDIA, MILLENNIUM DEVELOPMENT GOALS—INDIA COUNTRY REPORT 2009, at 84 (2009), available at http://mospi.nic.in/rept%20_%20pubn/ftest.asp?rept_id=ssd04_2009&type=NSSO [hereinafter MDG INDIA COUNTRY REPORT].

14. See *Central Rural Sanitation Programme*, INDIA.GOV, <http://india.gov.in/sectors/rural/index.php?id=11> (last visited Oct. 22, 2011).

15. See DEP'T OF DRINKING WATER SUPPLY, MINISTRY OF RURAL DEV., GOV'T OF INDIA, GUIDELINES: CENTRAL RURAL SANITATION PROGRAMME, TOTAL SANITATION CAMPAIGN 2 (2007), available at http://www.ddws.gov.in/sites/upload_files/ddws/files/pdf/TSCGUIDELINES-June2010.pdf [hereinafter TSC GUIDELINES].

16. See GOV'T OF INDIA, MINISTRY OF RURAL DEV., DEP'T OF DRINKING WATER SUPPLY, NIRMAL GRAM PURASKAR GUIDELINES 1 (2010), available at <http://nirmalgrampuraskar.nic.in/Documents/PDF/GuidelinesEnglish2010.pdf> [hereinafter NGP GUIDELINES].

17. See MDG INDIA COUNTRY REPORT, *supra* note 13, at 85.

18. See *generally* WATER AND SANITATION PROGRAM, INADEQUATE SANITATION COSTS INDIA RS. 2.4 TRILLION (US\$53.8 BILLION), available at <http://www.wsp.org/wsp/sites/wsp.org/files/publications/wsp-esi-india.pdf>.

II. THE IMPORTANCE OF SANITATION

A. *Definition of Sanitation*

According to the Centre on Housing Rights and Evictions, a leading international human rights organization,¹⁹ the most basic right to sanitation means the availability of facilities for the disposal of excreta that avoids human, animal, and insect contact with excreta.²⁰ Sewer services, or the emptying of latrines, are another component of adequate sanitation.²¹ Most importantly, sanitation encompasses the need for privacy and dignity.²²

The U.N. Sub-Commission on the Promotion and Protection of Human Rights outlined four basic guidelines of the right to sanitation.²³ First, sanitation must be safe, and “conducive to the protection of public health and the environment.”²⁴ This requires a toilet that is hygienic with no risk of collapse and the safe disposal of excreta and wastewater, thereby preventing human, animal, and insect contact.²⁵ Second, sanitation must be physically accessible within the immediate vicinity of the household or workplace, and that access must not risk the physical safety of the individual.²⁶ Third, sanitation must be affordable—which includes the construction of facilities, emptying and treatment of human waste, and connection to a sewage system—without forcing families to sacrifice other basic goods and services.²⁷ Finally, sanitation must be of a culturally acceptable quality.²⁸ This encompasses the construction, positioning, and conditions for use (including separate toilets for men and women), culturally acceptable washing facilities for after toilet use, and a way to empty the latrine which avoids contact with human waste.²⁹

19. *About Us*, COHRE, <http://www.cohre.org/about-us> (last visited Oct. 22, 2011).

20. THORSTEN KIEFER ET AL., COHRE, *LEGAL RESOURCES FOR THE RIGHT TO WATER AND SANITATION*, 8-9 (2d ed. 2008), available at http://www.worldwatercouncil.org/fileadmin/www/Programs/Right_to_Water/Pdf_doct/RWP-Legal_Res_1st_Draft_web.pdf.

21. *Id.*

22. *Id.*

23. See Special Rapporteur on the Enjoyment of Economic, Social, and Cultural Rights and the Promotion of the Right to Drinking Water Supply and Sanitation, *Realization of the Right to Drinking Water and Sanitation*, § 1.3, U.N. Comm’n on Hum. Rts., Sub-Comm’n on the Promotion and Prot. of Hum. Rts., UN Doc. E/CN.4/Sub.2/2005/25 (July 11, 2005), (by El Hadji Guissé) [hereinafter *Draft Guidelines*].

24. *Id.* § 1.2.

25. COHRE, UN-HABITAT, WATERAID, SDC, *SANITATION: A HUMAN RIGHTS IMPERATIVE* 18 (2008) [hereinafter *SANITATION: A HUMAN RIGHTS IMPERATIVE*].

26. *Draft Guidelines*, *supra* note 23, § 1.3(a), (c).

27. *Id.* § 1.3(d).

28. *Id.* § 1.3(b).

29. *SANITATION: A HUMAN RIGHTS IMPERATIVE*, *supra* note 25, at 20.

B. Lack of Access to Sanitation

Without proper sanitation facilities, the choices are grim for relieving oneself.³⁰ Open defecation is still widely practiced by over 1.1 billion people worldwide.³¹ Instead of the privacy and dignity of a toilet, individuals are forced to use any field left unguarded by its owner, a ditch running alongside a busy highway, or a bush.³² Basarat Ansari, a homeless laborer from India, commented, “[w]e go to the toilet on the street . . . I know other people have to walk in it. But you don’t have much choice if you have to go.”³³ In the interest of privacy, many use “flying toilets,” which is the practice of relieving oneself in a plastic bag and throwing it out a window, in a ditch, or anywhere as far away as possible.³⁴

Even if sanitation facilities are provided, they may not be adequate.³⁵ For instance, the latrines in Nairobi, Kenya are unusable because they are full and the residents do not have the funds to hire anyone to empty the latrines.³⁶ The residents fear the waste will overflow in the rainy season and flood their homes.³⁷ Some may have access to community toilets with as many as 50 to 150 people sharing one pit latrine.³⁸ Yet, the journey to the community latrine may be far from the user’s home, posing a safety risk for women in the absence of daylight.³⁹ There are also pay toilets that charge a fee for each use, but these are usually unaffordable for many families living in the slums.⁴⁰ No one should be forced to use such alternatives because they are deprived of the safety and dignity of a clean, private toilet.⁴¹

C. Necessity of Sanitation

For those living in developed and urban areas of the world, the availability of private, safe facilities to relieve oneself may be taken for granted.⁴² The implications of poor sanitation are a harsh reality for 2.6 billion people in the

30. See, e.g., Gale, *supra* note 2.

31. MDG REPORT, *supra* note 12, at 61.

32. See Gale, *supra* note 2.

33. Mark Magnier, *India Lags Behind in Sanitation Facilities*, L.A. TIMES (Mar. 22, 2010), <http://articles.latimes.com/2010/mar/22/world/la-fg-india-toilets22-2010mar22>.

34. Joyce Mulama, *Flying Toilets Still Airborne*, INTER PRESS SERV. NEWS AGENCY (Oct. 24, 2006), <http://ipsnews.net/news.asp?idnews=35222>.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Risking Rape to Reach a Toilet*, AMNESTY INT’L, 6 (2010), <http://www.amnesty.org/en/library/asset/AFR32/006/2010/en/6eab2ee6-6d6c-4abd-b77c-38cfc7621635/afr320062010en.pdf>.

39. *Id.*

40. *Id.*

41. See VILLAGE WATER, <http://www.villagewater.org/> (last visited Nov. 5, 2011).

42. Magnier, *supra* note 33.

world who face deadly diseases, sexual assault, poor education, and poverty—all a result of the failure to provide basic sanitation.⁴³

1. Health

General Dr. Margaret Chan, the Director of the World Health Organization, stated “[s]anitation is a cornerstone of public health.”⁴⁴ Poor sanitation provides a breeding ground for the proliferation of bacteria, viruses, and parasites by exposing individuals to human waste.⁴⁵ There are various ways that humans come into contact with urine and excreta.⁴⁶ Without proper sanitation facilities, human waste is discharged into water bodies or penetrates groundwater, contaminating the fresh water supply.⁴⁷ Such contamination pollutes drinking water, agricultural foods, seafood, and rivers used for bathing or recreation.⁴⁸ Individuals also risk falling in human waste as a result of widespread open defecation which pollutes the streets and fields.⁴⁹ For instance, six-year-old Grace Sayisi, who lives in the slums of Nairobi, Kenya, was infected with cholera after falling into sewage near her house.⁵⁰ Contact may also occur indirectly through insects that come into contact with excreta and subsequently transmit diseases to humans.⁵¹ Jamie Bartram, the head of the World Health Organization’s water, sanitation, hygiene and health group, remarks that “[i]f you’ve got feces all around you, it will find its way into your mouth.”⁵²

According to a report by WaterAid, 80% of disease in the developing world is a result of poor sanitation.⁵³ Common diseases caused by contact with human waste include dysentery, cholera, typhus fever, typhoid, schistosomiasis, and

43. Solon, *supra* note 1; AMNESTY INT’L, *supra* note 38; Gale, *supra* note 2.

44. WHO/UNICEF, *Poor Sanitation Threatens Public Health*, WHO (Mar. 20, 2008), <http://www.who.int/mediacentre/news/releases/2008/pr08/en/> [hereinafter *Poor Sanitation Threatens Public Health*].

45. *Id.*

46. See, e.g., *E. Coli Infection*, WEBMD, <http://www.webmd.com/a-to-z-guides/e-coli-infection-topic-overview> (last updated June 14, 2010); see also Ann Marie Rodrigues, *Waste Matters*, THE JAMAICA STAR ONLINE, <http://jamaica-star.com/thestar/20100807/features/features4.html> (last visited Oct. 30, 2011).

47. DAYANAND B. PANSE, ECOLOGICAL SANITATION—A NEED OF TODAY! PROGRESS OF ECOSAN IN INDIA (2006), available at <http://www.gtz.de/en/dokumente/en-innovative-ecosan-network-india-progress-text-2006.pdf>.

48. WHO, *10 Things You Need to Know About Sanitation*, UN WATER, <http://www.unwater.org/wwd08/docs/10Things.pdf> (last visited Nov. 5, 2011) [hereinafter *10 Things You Need to Know About Sanitation*].

49. See AMNESTY INT’L, *supra* note 38, at 8.

50. *Id.*

51. Karen E. Kelley & Edward F. Vitzthum, *Human Health and Water*, WATER ENCYCLOPEDIA <http://www.waterencyclopedia.com/Ge-Hy/Human-Health-and-Water.html> (last visited Oct. 30, 2011).

52. Gale, *supra* note 2.

53. WATERAID & TEARFUND, THE HUMAN WASTE 3, available at http://www.wateraid.org/documents/plugin_documents/humanwaste.pdf [hereinafter THE HUMAN WASTE].

trachoma.⁵⁴ Although not fatal, poor sanitation also leads to parasitic worm infections which cause “anemia, stunted growth and other debilitating conditions.”⁵⁵ The contamination of water resources, soil, and food is a major cause of diarrhea.⁵⁶ Although a treatable disease for most people, diarrhea is fatal in developing countries,⁵⁷ killing nearly 6,000 children per day.⁵⁸ “In the past 10 years [diarrhea] has killed more children than all the people lost to armed conflict since World War II.”⁵⁹ It is estimated that diarrhea kills one thousand children under five each day in India alone.⁶⁰ By improving sanitation in developing countries, the death rate from diarrhea will be reduced by as much as two-thirds.⁶¹

2. Safety

In addition to health concerns, there are many safety issues posed by inadequate sanitation.⁶² Women and young girls risk sexual harassment and assault when they do not have access to basic sanitation.⁶³ In order to avoid the embarrassment of relieving themselves in the open, women, such as Meera Devi, seek out secluded areas at night or in the early hours of the morning to defecate as privately as possible.⁶⁴ That very protection of seclusion offered by darkness, however, also provides a cloak of secrecy for the perpetration of sexual crimes against women.⁶⁵ Likewise, the use of a community toilet can be unsafe in the evening hours.⁶⁶ Unheeding her friends’ warnings, Rebecca Nduku, a resident of Nairobi, Kenya, set out for the community latrine at seven-thirty in the evening.⁶⁷ When she emerged, five men dragged her to an abandoned house and sexually abused her.⁶⁸ The single mother of three now battles HIV as a result.⁶⁹

54. *Id.* at 10.

55. *Id.*

56. *Poor Sanitation Threatens Public Health*, *supra* note 44.

57. *Id.*

58. *THE HUMAN WASTE*, *supra* note 53, at 3.

59. *Id.* at 10.

60. MINISTRY OF RURAL DEV., DEP’T OF DRINKING WATER SUPPLY, *SUSTAINING THE SANITATION REVOLUTION: INDIA COUNTRY PAPER 1* (2008), available at http://indiasanitationportal.org/sites/default/files/India_Country_Paper.pdf [hereinafter *INDIA COUNTRY PAPER*].

61. *THE HUMAN WASTE*, *supra* note 53, at 11.

62. *Gale*, *supra* note 2.

63. *Id.*

64. *Id.*

65. Tabitha Nderitu, *Kenya Sanitation: ‘Flying-Toilets’ Insulate Women from Rape*, *WOMEN NEWS NETWORK* (Dec. 27, 2010), <http://womennewsnetwork.net/2010/12/27/kenya-flying-toilets-women/>.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

Wild animals also pose a safety risk for women when they must defecate in the open.⁷⁰ Brahani, a teacher in the small village of Gawanda located in Southern Ethiopia, is “afraid of being attacked by wild animals or drunkards.”⁷¹ Her fear is not unfounded, as five-year-old Kamala from Nepal was mauled to death by a tiger while defecating in an open field, a widespread practice in her village.⁷² The death of Kamala, the sexual abuse of Rebecca Nduku, and other similar tragedies can be prevented by increasing sanitation coverage.

3. Education

Along with the health and safety risks, the lack of proper sanitation facilities causes many children to miss school.⁷³ It is estimated that “443 million school days are lost each year as a result of water- and sanitation-related diseases.”⁷⁴ Some healthy children cannot afford school because their family spends scarce financial resources for health services to treat sanitation-related diseases.⁷⁵ Even if able to attend school, many children are plagued with intestinal worm infections which leave them mentally disabled and incapable of learning.⁷⁶

The lack of sanitation disproportionately burdens girls’ education as they are more frequently absent from school.⁷⁷ Girls must assist with household chores, such as fetching water or cleaning latrines.⁷⁸ When family members become ill with hygiene-related diseases, the girls of the family are kept home to take care of them.⁷⁹

Beyond their household duties, girls are forced to choose between using a unisex latrine or nothing at all while at school.⁸⁰ Such a choice causes girls to simply not attend school at all.⁸¹ This is especially true when young girls reach puberty.⁸² Twelve-year-old Edna Phiri, a schoolgirl in M’buka Primary School in Malawi, testified that “[s]ince the urinals were built, I’ve been attending school regularly. Also, I don’t have to go to the bush to urinate, as I did before. In fact,

70. Labahari Budhathoki & Tekendra Bhatta, *Nepal: Tiger Attack on Young Girl Prompts Villagers to End Open Defecation in Fields*, IRC INT’L WATER AND SANITATION CENTER E-SOURCE (Nov. 10, 2006), <http://www.irc.nl/page/31624>.

71. THE HUMAN WASTE, *supra* note 53, at 12.

72. Budhathoki & Bhatta, *supra* note 70.

73. *Water, Sanitation and Hygiene in Schools*, UNICEF, http://www.unicef.org/wash/index_schools.html (last updated July 19, 2010) [hereinafter *Water, Sanitation and Hygiene in Schools*].

74. G.A. Res. L.63/Rev.1, U.N. Doc. A/64/L.63/Rev.1 (July 26, 2010) [hereinafter 2010 U.N. Res.].

75. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 4.

76. *Id.*

77. *Water, Sanitation and Hygiene in Schools*, *supra* note 73.

78. *Id.*

79. *Id.*

80. Gale, *supra* note 2.

81. *Id.*

82. *Id.*

there are fewer girls getting sick—before the toilets were built, you sometimes stepped in [feces] on your way to the bush.”⁸³

Some parents refuse to allow their daughters to attend schools that lack toilets because they fear molestation, which would devastate their daughter’s chances of attracting a suitor.⁸⁴ Currently 113 million children worldwide are not enrolled in school.⁸⁵ Of this figure, 60% are girls.⁸⁶ Improving sanitation facilities in schools is central to the effort of improving this figure, and thereby the status of women in India.⁸⁷

Such barriers to education compromise the child’s future.⁸⁸ The United Nations Children’s Fund (“UNICEF”) suggests that “[h]elping children reach their full potential is also investing in the very progress of humanity.”⁸⁹ Without education, there is a greater risk that children will lead lives of poverty.⁹⁰ The resulting shortage of skilled laborers has the much broader implication of adversely impacting the country as a whole because of the lack of contribution to the nation’s economy.⁹¹

4. Economic Impact

The effects of poor sanitation often result in an economic struggle for poor families.⁹² A family expends scarce financial resources for health services to treat sanitation-related diseases instead of spending it on other important needs.⁹³ According to a study conducted in Karachi, Pakistan, those living in areas without access to sanitation spent six times more on medical treatments than those living with access.⁹⁴ After the significant improvement on safe disposal of human waste and hand washing practices, a study of Tiruchirapalli Tamil Nadu, India found that income used for treating diseases fell from 36% to 4%.⁹⁵

83. *More Toilets, More Girls in School in Malawi*, DEP’T FOR INT’L DEV. (Mar. 17, 2008), <http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/casestudies/files/africa/malawi-girls-urinals.asp>.

84. Magnier, *supra* note 33.

85. *THE HUMAN WASTE*, *supra* note 53, at 16.

86. *Id.*

87. Magnier, *supra* note 33.

88. *See* Gale, *supra* note 2.

89. *The Millennium Declaration and Development Goals: A Blueprint for Progress*, UNICEF, http://www.unicef.org/mdg/index_aboutthegoals.htm (last visited Nov. 3, 2010) [hereinafter *MDG: Blueprint for Progress*].

90. Gale, *supra* note 2.

91. *Id.*

92. *SANITATION: A HUMAN RIGHTS IMPERATIVE*, *supra* note 25, at 4.

93. *Id.*

94. *THE HUMAN WASTE*, *supra* note 53, at 21.

95. *Id.*

Poor sanitation is costly not only for individual families, but also for the entire country.⁹⁶ Sanitation-related diseases drain resources from the public health systems.⁹⁷ Profits from tourism wane as travelers are less likely to risk disease by visiting a country with feces-lined streets and an open field as the only toilet.⁹⁸ A study by the World Bank found that decreased tourism costs India roughly 260 million dollars annually.⁹⁹ Labor productivity also suffers as individuals contract diseases spread through contact with human excreta.¹⁰⁰ It is estimated that over 73 million workdays are lost as a result of waterborne diseases, which translates into an economic burden of 600 million dollars.¹⁰¹ All factors considered, the World Bank study concluded that a lack of toilets and poor hygiene practices costs India 54 billion dollars every year.¹⁰² This translates into 6.4% of India's gross domestic product.¹⁰³ According to Clarissa Brocklehurst, UNICEF's chief of water, sanitation, and hygiene, "India cannot reach its full economic potential unless they do something about this sanitation crisis."¹⁰⁴

5. *Environmental Impact*

In addition to the economic burden placed on countries as a result of poor sanitation, environmental degradation is exacerbated by the absence of basic facilities.¹⁰⁵ Without proper facilities, human waste flows directly into streams, rivers, lakes, and wetlands, contaminating water resources and greatly reducing fresh water supplies.¹⁰⁶ In addition to depleting an already scarce resource, contamination of the water supplies causes a reduction in biodiversity, threatening the ecological balance of the environment.¹⁰⁷ For example, waste and sewage increase the level of nitrogen in seawater, which causes an overgrowth of

96. Nita Bhalla, *No Toilets Cost India \$54 Billion Annually—World Bank*, REUTERS (Dec. 20, 2010, 7:16 PM), <http://in.reuters.com/article/idINIndia-53685720101220> (based on 2006 figures).

97. *Id.*

98. *See id.*

99. *Id.*

100. *See* U.N. Econ. & Soc. Comm'n for Asia & the Pac., *Statistical Yearbook for Asia & the Pacific 2009*, 73, U.N. Sales No. E.10.II.F.1, available at <http://www.unescap.org/stat/data/syb2009/ESCAP-SYB2009.pdf>.

101. INDIRA KHURANA & ROMIT SEN, TOWARDS UNDERSTANDING THE RIGHT TO WATER AND SANITATION 1 (Ajit Chak ed., 2009), available at http://www.indiawaterportal.org/sites/indiawaterportal.org/files/WAI%20Discussion%20Paper_Towards%20Understanding%20the%20Right%20to%20WatSan_2009_0.pdf.

102. Bhalla, *supra* note 96.

103. *Inadequate Sanitation Costs India the Equivalent of 6.4 Percent of GDP*, WATER AND SANITATION PROGRAM, <http://www.wsp.org/wsp/node/1150> (last visited Oct. 29, 2011) ("The findings are based on 2006 figures, although a similar magnitude of losses is likely in later years.")

104. Gale, *supra* note 2.

105. THE HUMAN WASTE, *supra* note 53, at 18.

106. *10 Things You Need to Know About Sanitation*, *supra* note 48.

107. *Id.*

algae.¹⁰⁸ This overgrowth cuts off sunlight, smothering coral reefs.¹⁰⁹ Another environmental impact arises not from open defecation, but from the widespread practice of “flying toilets.”¹¹⁰ Instead of defecating in the open, many individuals relieve themselves in a plastic bag which is then thrown from windows or discarded in ditches.¹¹¹ The plastic bags litter roofs, clog drainage systems, and sometimes burst upon landing.¹¹² All of these common practices contribute to a declining and unhealthy environment.¹¹³ In Meera Devi’s village of Kachpura located in India,

sewage and household wastewater flow along open drains that line both sides of narrow alleyways. The fetid water gathers in a shallow channel choking with plastic containers, discarded footwear and household trash. . . . A mechanical pump chugs on the bank, sucking up the liquid to dispense over a nearby vegetable patch. . . . The rest of the slurry empties into a trench coursing along a feces-dotted path through a field of cauliflowers. A shoeless boy uses a long-handled spade to create a new sluice for the black sludge to ooze over the vegetable field. What’s not drained from the trench empties into a cesspool on the flood plain of the Yamuna River. . . .¹¹⁴

It is imperative for the health, safety, and well-being of mankind as well as for environmental sustainability to provide adequate access to basic sanitation.¹¹⁵ According to UNICEF, “[a]ccess to sanitation facilities is a fundamental human right that safeguards health and human dignity.”¹¹⁶ In addition, sanitation is central to the efforts of realizing nearly all other human rights such as the right to education, health, adequate housing, work, food, and water.¹¹⁷ In order to safeguard these fundamental rights, it is necessary for the international community to legally recognize sanitation as a basic human right and take steps to improve coverage.¹¹⁸

108. *Id.*

109. *Id.*

110. *See* Mulama, *supra* note 34.

111. *See id.*

112. *Id.*

113. *See* SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 21.

114. Gale, *supra* note 2.

115. *See* Solon, *supra* note 1.

116. UNICEF, SANITATION FOR ALL: PROMOTING DIGNITY AND HUMAN RIGHTS 3 (2000), available at <http://www.unicef.org/wash/files/sanall.pdf> [hereinafter UNICEF SANITATION FOR ALL].

117. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 3.

118. *See id.* at 5.

III. THE RIGHT TO BASIC SANITATION

In the past, the international community did not officially recognize the right to sanitation as an independent human right, although it is inextricably linked with other recognized human rights.¹¹⁹ For instance, the 1948 Universal Declaration of Human Rights recognized the right to “a standard of living adequate for the health and well-being of himself and of his family.”¹²⁰ Though undeniable that access to adequate sanitation is a cornerstone of health,¹²¹ it remained unmentioned as a necessary element.¹²²

As an outgrowth of the Universal Declaration of Human Rights, the United Nations adopted the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) in 1966.¹²³ Although reaffirming an individual’s fundamental right to an adequate standard of living¹²⁴ and the highest standard of health,¹²⁵ the ICESCR failed to include a right to basic sanitation.¹²⁶ The United Nations established the Committee on Economic, Social and Cultural Rights in order to interpret and monitor the implementation of the ICESCR.¹²⁷ The committee adopted General Comment 15 in 2002, which finally acknowledged access to sanitation as a necessary element of the human right to water.¹²⁸

A. *General Comment 15*

General Comment 15 recognized that “[t]he right to water . . . is one of the most fundamental conditions for survival.”¹²⁹ It outlined three essential components of the right to water.¹³⁰ First, individuals should have a sufficient and continuous water supply for personal and domestic uses.¹³¹ Personal sanitation is one such use and is defined as the disposal of human excreta.¹³²

Second, water must be safe for personal and domestic uses, meaning that the water must not pose a threat to public health and it “should be of an acceptable

119. *Id.* at 3.

120. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

121. *Poor Sanitation Threatens Public Health*, *supra* note 44.

122. *See* Universal Declaration of Human Rights, *supra* note 120.

123. G.A. Res. 2200 (XXI), § 49, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICESCR].

124. *Id.* at art. 11.

125. *Id.* at art. 12.

126. *See id.* at arts. 11-12.

127. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 11.

128. *See General Comment 15*, *supra* note 7, at 2, ¶ 2.

129. *Id.* at 2, ¶ 3.

130. *Id.* at 5-6, ¶ 12(a)-(c).

131. *Id.* at 5, ¶ 12(a).

132. *Id.*

colour, odour and taste for each personal or domestic use.”¹³³ Third, water must be physically and economically accessible to everyone without discrimination.¹³⁴

General Comment 15 also identified a number of core obligations for immediate effect in relation to the right to water.¹³⁵ One such core obligation was to ensure access to basic sanitation.¹³⁶ “Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.”¹³⁷ As General Comment 15 suggests, adequate water and sanitation are inextricably linked.¹³⁸ Poor sanitation impacts the supply and quality of water resources through contamination of the fresh water supply.¹³⁹ In turn, water is desperately needed for sanitation as it is a necessary element of cleanliness and personal hygiene.¹⁴⁰ Not only is water needed for hygiene,¹⁴¹ but a greater water supply is also needed for the development of facilities and for disposal to prevent environmental pollution and standing water, which breeds disease-causing pathogens.¹⁴² The Center on Housing Rights and Evictions concluded that in order to “ensure that sanitation gets the sustained attention necessary in the face of 2.6 billion people around the world living without access to a decent toilet or latrine, it is crucial that it is understood that water and sanitation are two sides of one coin.”¹⁴³

India is a state party to the ICESCR,¹⁴⁴ meaning that the provisions are legally binding upon it.¹⁴⁵ India must ensure a fundamental right to an adequate standard of living¹⁴⁶ and the highest standard of health.¹⁴⁷ General Comments are not per se legally binding on the state parties, but are merely interpretive tools for the clarification of the particular human rights treaty.¹⁴⁸ However, as an interpretation

133. *Id.* at 5, ¶ 12(b).

134. *Id.* at 6, ¶ 12(c).

135. *Id.* at 12-13, ¶ 37.

136. *Id.* at 13, ¶ 37(i).

137. *Id.* at 11.

138. *See id.*

139. PANSE, *supra* note 47, at 1.

140. *See The Right to Sanitation*, RTS. TO WATER & SANITATION, <http://www.righttowater.info/right-to-sanitation/> (last visited Oct. 14, 2011).

141. *Id.*

142. Ashfaq Khalfan, *The Human Right to Water and Sanitation: Legal Basis, Practical Rationale and Definition*, CENTER ON HOUSING RTS. AND EVICTIONS, 5 (Mar. 26, 2008), http://www.wsscc.org/sites/default/files/publications/cohre_legal_basis_for_right_to_water_and_sanitation_2008.pdf.

143. *Id.*

144. *See Status of Treaties*, UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-3&chapter=4&lang=en (last visited Oct. 28, 2011). India acceded on April 10, 1979. *Id.*

145. ICESCR, *supra* note 123, at Preamble.

146. *Id.* at art. 11.

147. *Id.* at art. 12.

148. *Frequently Asked Questions*, WORLD WATER COUNCIL, <http://www.worldwatercouncil.org/index>.

of the ICESCR (a legally binding instrument),¹⁴⁹ General Comment 15 obligates the state parties to fulfill the standards set forth.¹⁵⁰ This means that India has an obligation to ensure everyone has access to adequate sanitation.¹⁵¹

B. *U.N. Resolutions and Conventions*

Prior to the adoption of General Comment 15,¹⁵² the United Nations addressed its commitment to recognizing sanitation as a basic human right through various instruments following the adoption of the Universal Declaration of Human Rights in 1948.¹⁵³ One such instrument is the Convention on the Elimination of All Forms of Discrimination Against Woman (“CEDAW”) adopted by the U.N. General Assembly in 1979.¹⁵⁴ It is an international bill of rights to achieve equality for women.¹⁵⁵ One provision calls for countries to ensure the right of women “[t]o enjoy adequate living conditions, particularly in relation to . . . sanitation.”¹⁵⁶ The Convention entered into force on September 3, 1981.¹⁵⁷ India is among the ninety-eight signatories and ratified the document on July 9, 1993.¹⁵⁸

Sanitation as a human right was again recognized in the Convention on the Rights of the Child (“CRC”) which arose out of the Universal Declaration of Human Rights¹⁵⁹ in order to establish those same human rights for children.¹⁶⁰ The CRC required “States Parties [to] recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”¹⁶¹ The body in charge of interpreting and monitoring the CRC, the Committee on the Rights of the Child, has frequently interpreted the right to an adequate standard of living to include access to latrines.¹⁶² India acceded to the

php?id=1764&L=%252527#c9492 (last visited Oct. 21, 2011).

149. ICESCR, *supra* note 145.

150. *General Comment 15*, *supra* note 7, at 15, ¶ 45.

151. *See id.* at 11.

152. *See General Comment 15*, *supra* note 7.

153. *See, e.g.*, Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 20378 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; *see also* Convention on the Rights of the Child, Preamble, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; *Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/history.shtml> (last visited Nov. 5, 2011).

154. *See* CEDAW, *supra* note 153.

155. *Id.*

156. *Id.* at art. 14(2)(h).

157. *Status of Treaties*, *supra* note 144.

158. *Id.*

159. CRC, *supra* note 153.

160. *Id.*

161. *Id.* at art. 27, ¶ 1.

162. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 13.

CRC on December 11, 1992,¹⁶³ meaning that India is bound by it and is therefore committed to safeguarding these rights for children.¹⁶⁴

In spite of references to the human right to sanitation in CEDAW and the CRC (among other legal instruments), the right was not fully recognized.¹⁶⁵ Ambassador Pablo Solon of Bolivia, stated in his speech to the U.N. General Assembly: “the human right to water has continued to fail [sic] be fully recognized, despite clear references in various international legal instruments.”¹⁶⁶ Accordingly, the United Nations adopted the Resolution to the Human Right to Water and Sanitation in July, 2010.¹⁶⁷ The resolution acknowledged “the importance of equitable, safe and clean drinking water and sanitation as an integral component of the realization of all human rights.”¹⁶⁸ Not only is there an independent right to drinking water and sanitation, these rights are interconnected with other rights such as the right to an adequate standard of living.¹⁶⁹ The Resolution is not legally binding on the signatories.¹⁷⁰ That being so, it remains to be seen whether the Resolution will actually further the right to sanitation.¹⁷¹

Two months later, in September, 2010, the U.N. Human Rights Council affirmed in a separate resolution the existence of a right to sanitation in international law.¹⁷² Specifically, the resolution affirmed that sanitation is an integral component of the right to an adequate standard of living.¹⁷³ Further, sanitation is “inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.”¹⁷⁴ According to Catarina de Albuquerque, U.N. Independent Expert on human rights obligations related to access to safe drinking water and sanitation, “this means that for the U.N., the right to water and sanitation, is contained in existing human rights treaties and is therefore legally binding.”¹⁷⁵ In sum, this resolution went further than the July 2010 U.N. Resolution by specifying that the right entails legally binding obligations.¹⁷⁶

163. *Status of Treaties*, *supra* note 144.

164. *See* CRC, *supra* note 153, at art. 24.

165. *See* Solon, *supra* note 1.

166. *Id.*

167. *See* 2010 U.N. Res., *supra* note 74.

168. *Id.* at 2.

169. Solon, *supra* note 1.

170. *International Timeline, RTS. TO WATER AND SANITATION*, <http://www.righttowater.info/international-timeline/#2010> (last visited Nov. 2, 2011).

171. *See id.*

172. Human Rights Council Res. 7/28, Rep. of the Human Rights Council, 15th Sess., Sept. 24, 2010, UN Doc. A/HRC/15/L.14, ¶ 3 (Sept. 24, 2010).

173. *Id.*

174. *Id.*

175. U.N. *United to Make the Right to Water and Sanitation Legally Binding*, OFF. HIGH COMMISSIONER FOR HUM. RTS., <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10403&LangID=E> (last visited Nov. 2, 2011).

176. *See id.*

C. *National Recognition of Sanitation*

There are many countries that include, either implicitly or explicitly, a right to sanitation in their national constitutions.¹⁷⁷ Although inclusion of a right to sanitation in a national constitution is no guarantee of implementation, it serves as an important legal foundation for three reasons.¹⁷⁸ First, a constitutional provision is crucial for the development of legislation at the local government level.¹⁷⁹ Legislation can further specify the entitlements of individuals and outline the legal duties of the local authorities.¹⁸⁰ Second, a constitutional provision provides the necessary framework for judicial enforcement.¹⁸¹ Lastly, and most importantly, a constitutional recognition reflects the country's commitment to sanitation as a legal right that all are entitled to.¹⁸² Countries such as South Africa, Ecuador, Kenya, and Uruguay have all explicitly recognized the right to sanitation in their constitutions.¹⁸³

In addition to a constitutional provision, some countries choose to ensure the right to sanitation through national laws and policies.¹⁸⁴ The Centre on Housing Rights and Evictions advocates the use of national legislation in addition to a constitutional guarantee in order to transform the sometimes vague and unexplained constitutional provision into a practical and effective law.¹⁸⁵ Algeria, Bangladesh, Kenya, South Africa, and Sri Lanka are among the countries which have implemented national legislation setting out specific entitlements.¹⁸⁶

Regardless of the presence of an explicit constitutional provision or national legislation, a court in the country may call for the enforcement of a right to sanitation through other established rights.¹⁸⁷ For instance, courts in India, Pakistan, and Costa Rica find a right to sanitation from the constitutional right to life.¹⁸⁸ The courts of Argentina and Columbia derive the right to sanitation from the established right to health.¹⁸⁹ National recognition of a right to sanitation, whether through constitutional provisions or a national policy, is an important first step in improving coverage.¹⁹⁰

177. KIEFER ET AL., *supra* note 20, at 58.

178. *Id.*

179. *See id.*

180. *See id.*

181. *Id.*

182. *Id.* at 59.

183. *Id.* at 59-62.

184. *Id.* at 74-75.

185. *Id.*

186. *Id.* at 75.

187. *Id.* at 59.

188. *Id.*

189. *Id.*

190. *Id.* at 58.

D. Millennium Development Goals

World leaders from 189 Member States of the United Nations gathered together in September 2000 for the Millennium Summit at the U.N. headquarters in New York.¹⁹¹ The Summit addressed the deplorable conditions of some of the Member States¹⁹² and affirmed the “collective responsibility to uphold the principles of human dignity, equality and equity at the global level.”¹⁹³ In order to combat extreme poverty, hunger, illiteracy, and disease, the Member States adopted the Millennium Development Goals (MDG)—a set of eight measurable improvements to be achieved by the year 2015.¹⁹⁴ Included within the goal of environmental sustainability was the target of reducing “by half the proportion of people without sustainable access to safe drinking water and basic sanitation.”¹⁹⁵

Despite the commitment to improve sanitation, the world is struggling to achieve the MDG target.¹⁹⁶ In fact, this target remains one of the most off-track of all the MDG targets.¹⁹⁷ As much as 48% of the population in developing regions continues to suffer from a lack of sanitation.¹⁹⁸ One of the regions lagging behind the most is Southern Asia where 64% of the population lacks access.¹⁹⁹ Another component of increasing sanitation access is reducing the proportion of people still practicing open defecation.²⁰⁰ However, this number remains high—1.1 billion people practice open defecation worldwide.²⁰¹ Again, Southern Asia has the highest rate of open defecation in the world with 44% of its population still engaging in this practice.²⁰² As the second most populous country and one that is significantly behind in improving sanitation, India, located in Southern Asia, is central to meeting the MDG target.²⁰³

191. *MDG: Blueprint for Progress*, *supra* note 89.

192. See G.A. Res. 55/2, ¶ 2, U.N. Doc. A/RES/55/2 (Sept. 18, 2000), available at <http://www.un.org/millennium/declaration/ares552e.pdf>.

193. *Id.*

194. *MDG: Blueprint for Progress*, *supra* note 89.

195. *Goal 7: Ensure Environmental Sustainability*, U.N. DEV. PROGRAMME, <http://www.undp.org/mdg/goal7.shtml> (last visited Nov. 2, 2011) [hereinafter UNDP].

196. MDG REPORT, *supra* note 12, at 61.

197. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 1.

198. MDG REPORT, *supra* note 12, at 61 (based on 2008 figures).

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. PANSE, *supra* note 47, at 1.

IV. THE CURRENT SANITATION SITUATION IN INDIA

A. *Sanitation in India*

Although India has made great strides in improving sanitation, it is still drastically behind.²⁰⁴ It is ironic that one of the world's fastest growing economies²⁰⁵ suffers from the lack of such a basic necessity—toilets.²⁰⁶ A U.N. news release pointed out that Indians have greater access to cell phones than to a toilet or improved sanitation.²⁰⁷ Zafar Adeel, Director of United Nations University's Institute for Water, Environment and Health, points out "[i]t is a tragic irony to think that in India, a country now wealthy enough that roughly half of the people own phones, about half cannot afford the basic necessity and dignity of a toilet."²⁰⁸ Access to improved sanitation is much higher in countries with similar and lower per capita gross domestic product.²⁰⁹ Currently, 69% of the rural population of India and 18% of the urban population still defecates in the open.²¹⁰ The women of India have started their own campaign to force greater access to toilets—"No Toilet, No Bride" or, as the popular radio jingle names it, "No loo? No 'I do.'"²¹¹ Young women are refusing to marry suitors if their home lacks a bathroom facility.²¹² Concerned mother Usha Pagdi told reporters, "I won't let my daughter near a boy who doesn't have a latrine."²¹³ In a culture that favors baby boys, the less numerous females have the bargaining power to demand a toilet.²¹⁴

In order to achieve the target set forth in the MDG, India must reduce the proportion of households without improved sanitation to 38% by the year 2015.²¹⁵ At the current rate, India is scheduled to reduce that proportion to only 46%—

204. MDG INDIA COUNTRY REPORT, *supra* note 13, at 83.

205. Gale, *supra* note 2. "India has placed just behind China as the world's fastest-growing major economy." *Id.*

206. News Release, United Nations Univ. Inst. for Water, Env't and Health [UNU-INWEH], Greater Access to Cell Phones than Toilets in India (Apr. 14, 2010), *available at* http://www.inweh.unu.edu/News/2010-04_UNU-INWEH_News-Release_Sanitation.pdf.

207. *Id.*

208. *Id.*

209. ASIAN DEV. BANK [ADB], INDIA'S SANITATION FOR ALL: HOW TO MAKE IT HAPPEN 10 (2009), *available at* http://www.adb.org/documents/books/water_for_all_series/Indian-sanitation/Indian-sanitation.pdf [hereinafter INDIA'S SANITATION FOR ALL].

210. WHO/UNICEF JOINT MONITORING PROGRAMME FOR WATER SUPPLY AND SANITATION: ESTIMATES FOR THE USE OF IMPROVED SANITATION FACILITIES 8-9 (2010), *available at* http://www.wssinfo.org/fileadmin/user_upload/resources/IND_san.pdf.

211. Emily Wax, *In India, More Women Demand Toilets Before Marriage*, WASH. POST (Oct. 12, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/11/AR2009101101934.html>.

212. *Id.*

213. *Id.*

214. *Id.*

215. MDG INDIA COUNTRY REPORT, *supra* note 13, at 85.

missing the target by eight percentage points.²¹⁶ According to 2007-2008 figures, about 51% of Indians lack access.²¹⁷ Even more shocking is the disparity between urban and rural coverage.²¹⁸ It is projected that the urban proportion of households without sanitation will be reduced to 15% by 2015, missing the 12% target.²¹⁹ The rural proportion of households will be reduced to 64%, missing the 47% target.²²⁰ Sanitation must become a priority in India in order to accelerate progress towards meeting the MDG target.²²¹

B. Legal Recognition of a Right to Adequate Sanitation in India

1. Constitutional Basis

India's Constitution, adopted in 1949,²²² is the longest in the world.²²³ The length is attributed to the problems of accommodating differing points of views, numerous languages, and varied faiths, all while "striving at the same time to transform a rigid hierarchical social order into an egalitarian society."²²⁴ Recognizing pluralism as one of India's greatest weaknesses,²²⁵ the drafters were ultimately concerned with the unity of India.²²⁶ Thus, they were careful to write a document ensuring fundamental rights for all regardless of religion, sex, or caste.²²⁷ The framers included a clause, similar to the Due Process Clause of the United States' Constitution,²²⁸ which reads "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law."²²⁹ The Supreme Court of India initially interpreted this Life and Liberty Clause to mean that deprivation of life and liberty could be justified by any procedure.²³⁰ Soon it came to be understood as protecting certain rights, even with procedures established by law.²³¹ The procedures could now be "[scrutinized] by the courts and any procedure which was arbitrary or unreasonable could not pass muster."²³²

216. *Id.*

217. *Id.*

218. *See id.*

219. *Id.*

220. *Id.*

221. INDIA'S SANITATION FOR ALL, *supra* note 209, at 12-14.

222. FALI S. NARIMAN, THE INDIAN CONSTITUTION: DIMENSIONS AND PERSPECTIVES 2 (1999).

223. *Id.* at 1.

224. *Id.* at 3.

225. *Id.*

226. *Id.* at 5.

227. *Id.* at 3-4.

228. *Id.* at 7.

229. INDIA CONST. art. 21.

230. NARIMAN, *supra* note 222, at 7.

231. *See id.*

232. *Id.*

In essence, this interpretation imported the American concept of substantive due process.²³³

India's Constitution recognizes numerous specific fundamental rights beyond the guarantee of life and personal liberty.²³⁴ For example, the Constitution guarantees the right to education,²³⁵ religion,²³⁶ and equality.²³⁷ However, the Constitution fails to explicitly recognize a right to water or sanitation.²³⁸ Instead, the burden of recognizing the right is placed on the judiciary.²³⁹

2. Judicial Basis

The Supreme Court of India is tasked with interpreting the country's laws and is the final authority.²⁴⁰ Its decisions are binding "on all courts and authorities in the country."²⁴¹ Fali Nariman, Senior Advocate to the Supreme Court of India, described the nature and extent of the Supreme Court as "all-pervasive."²⁴² Even though the right to adequate sanitation is not explicitly mentioned in India's Constitution,²⁴³ the Supreme Court has interpreted the right to life of Article 21 to include the right to adequate sanitation.²⁴⁴ Justice J. S. Verma, former Chief Justice of the India Supreme Court, stated that "[i]nterpretation of Article 21 to mean life with dignity and not mere animal existence has the effect of increasing the worth of human beings."²⁴⁵ There are two notable cases from the 1980s that emphasize the importance of sanitation and the city's duty to ensure it.²⁴⁶

The Supreme Court of India affirmed the country's commitment to making sanitation a priority in the case *Municipal Council, Ratlam v. Shri Vardhichand*

233. Justice M. N. Venkatachaliah, *Human Rights: Role of the National Human Rights Commission of India*, JOURNAL OF THE 43RD CONG. OF THE UNION INTERNATIONALE DES AVOCATS (Union Internationale Des Avocats, New Delhi, India), Nov. 3-7, 1999, at 25, 27.

234. See generally INDIA CONST.

235. *Id.* at art. 21A.

236. *Id.* at arts. 25-28.

237. *Id.* at art. 14.

238. See generally *id.*

239. See *Mun. Council, Ratlam v. Vardhichand and Others*, A.I.R. 1980 S.C. 97 (India); see also L.K. Koolwal v. State of Rajasthan, 1988 A.I.R. 2 (Raj.) 3 (India).

240. NARIMAN, *supra* note 222, at 5.

241. *Id.*

242. *Id.*

243. See generally INDIA CONST.

244. See *Mun. Council, Ratlam*, A.I.R. 1980 S.C. at 108 (India); see also L.K. Koolwal, 1988 A.I.R. 2 (India).

245. Justice J. S. Verma, *Constitutional Obligations of the Judiciary*, JOURNAL OF THE 43RD CONG. OF THE UNION INTERNATIONALE DES AVOCATS (Union Internationale Des Avocats, New Delhi, India), Nov. 3-7, 1999, at 32, 35.

246. See *Mun. Council, Ratlam*, A.I.R. 1980 S.C. 97 (India); see also L.K. Koolwal, 1988 A.I.R. 2 (India).

& Others on July 29, 1980.²⁴⁷ The case centered on the municipality of Ratlam's failure to provide any sanitary facilities, resulting in open sewage saturating the roads and an unbearable stench.²⁴⁸ The citizens brought suit seeking the court to order Ratlam to fix the situation.²⁴⁹ Ratlam in turn pleaded financial difficulties hindering its ability to resolve the sanitation crisis.²⁵⁰ Relying on the Municipalities Act, the court found that Ratlam had a duty to provide sanitary facilities regardless of its lack of finances.²⁵¹ The court also emphasized that "[d]ecency and dignity are non-negotiable facets of human rights."²⁵² The court went on to recognize that by failing to provide sanitation facilities, the municipality was promoting the proliferation of open defecation.²⁵³ The court ordered the city to rectify the problem within six months and suggested a shift in budgetary allotments in order to finance the sanitary facilities and public health measures.²⁵⁴

Eight years later, the Rajasthan High Court affirmed that the right to life includes the right to adequate sanitation in the case *L.K. Koolwal v. State of Rajasthan and Others*.²⁵⁵ A citizen of Jaipur filed suit against the State of Rajasthan alleging that the sanitation problem in Jaipur was hazardous to the life of the citizens.²⁵⁶ The court found that the maintenance of health and the preservation of sanitation and environment is a component of the right to life enshrined in Article 21 of the Constitution.²⁵⁷ Poor sanitation adversely affects the life of the citizens due to the hazards created.²⁵⁸ The court characterized insanitation as a slow poisoning leading to an early death.²⁵⁹ The court ordered the city of Jaipur to clean up the filth within six months of the judgment.²⁶⁰ As a result of these cases, adequate sanitation is an integral component of the right to life enshrined in Article 21 of India's Constitution.²⁶¹

247. See *Mun. Council, Ratlam*, A.I.R. 1980 S.C. 97 (India).

248. *Id.* at 100.

249. *Id.*

250. *Id.* at 108.

251. *Id.*

252. *Id.* at 110.

253. *Id.* at 102.

254. *Id.*

255. *L.K. Koolwal v. State of Rajasthan*, 1988 A.I.R. (Raj.) 2 (1986) (India), available at <http://indiankanoon.org/doc/778875/>.

256. *Id.* ¶ 1.

257. *Id.* ¶ 3.

258. *Id.*

259. *Id.* ¶ 1.

260. *Id.* ¶ 10. As of the date that this comment was going to publication, this author could not find any studies or reports on the city's success or failure in complying with this judgment.

261. See *Mun. Council, Ratlam v. Shri Vardhichand*, (1981) 1 S.C.R. 97 (1980) (India), available at <http://indiankanoon.org/doc/440471/>; *L.K. Koolwal*, 1988 A.I.R. (Raj.) 2 (India).

C. *India's Response to the Sanitation Crisis*

India first addressed the need for improved sanitation in 1980.²⁶² Although not adequately responding at first, India soon proved its commitment through implementing several programs over the years.²⁶³ Through these programs, sanitation has improved quite dramatically, but there are still a large number of people living without access to adequate sanitation.²⁶⁴

1. *Five Year Plans*

In pursuit of the fundamental rights guaranteed in the Constitution of India, the government established the Planning Commission in March of 1950.²⁶⁵ The role of the Planning Commission includes assessing the nation's resources, formulating a plan that most effectively utilizes those resources, identifying factors hindering economic growth, evaluating the progress of the established plans, and making recommendations.²⁶⁶ Since 1951, the Planning Commission has established a plan every five years.²⁶⁷ The Planning Commission first addressed the sanitation crisis in the Sixth Five Year Plan initiated in 1980.²⁶⁸ By the Seventh Five Year plan, the Planning Commission set a goal to "provide 25% of rural households with individual household sanitary latrines."²⁶⁹ Currently, India is nearing the end of its Eleventh Five Year Plan²⁷⁰ with the Twelfth Five Year Plan already underway.²⁷¹ The Eleventh Five Year Plan addresses the inadequacies of sanitation in rural areas and affirms the country's commitment to the Total Sanitation Campaign which calls for complete sanitation coverage by the year 2012.²⁷²

262. INDIA COUNTRY PAPER, *supra* note 60, at 4.

263. WATERAID, FEELING THE PULSE: A STUDY OF THE TOTAL SANITATION CAMPAIGN IN FIVE STATES 2 (2008), available at http://www.wsscc.org/sites/default/files/india_wateraid_feeling_the_pulse_total_sanitation_campaign_2008.pdf [hereinafter FEELING THE PULSE].

264. See MDG INDIA COUNTRY REPORT, *supra* note 13, at 83.

265. See *First Five Year Plan: Introduction*, GOV'T OF INDIA PLAN. COMMISSION (1952), <http://planningcommission.gov.in/plans/planrel/fiveyr/welcome.html>.

266. *Id.*

267. *Id.*; *India's Five Year Plans*, ECONOMYWATCH (June 30, 2010), <http://www.economywatch.com/five-year-plans/>.

268. INDIA COUNTRY PAPER, *supra* note 60, at 4.

269. Sekhar Bonu & Hun Kim, *Sanitation in India: Progress, Differentials, Correlates, and Challenges* 3 (Asian Dev. Bank, South Asia Occasional Paper Series No. 2, 2009), available at <http://www.indiaenvironmentportal.org.in/files/sanitation.pdf>.

270. See GOV'T OF INDIA PLANNING COMM'N, ELEVENTH FIVE YEAR PLAN: AGRICULTURE, RURAL DEVELOPMENT, INDUSTRY, SERVICES AND PHYSICAL INFRASTRUCTURE (2008), available at http://planningcommission.gov.in/plans/planrel/fiveyr/11th/11_v3/11th_vol3.pdf.

271. *Approach to the Twelfth Five Year Plan*, GOV'T OF INDIA PLAN. COMMISSION, <http://planningcommission.gov.in/plans/comments/inter.htm> (last visited Oct. 18, 2011).

272. GOV'T OF INDIA PLANNING COMM'N, *supra* note 270, at 136.

2. Central Rural Sanitation Programme

The Central Rural Sanitation Programme (CRSP) was the first nationwide program to respond to the sanitation plight of India.²⁷³ The government launched the program in 1986 to “[improve] the quality of life of rural people and [provide] privacy and dignity to women.”²⁷⁴ The government financially sponsored the CRSP which focused on the construction of individual toilets for households below poverty-line,²⁷⁵ earning less than 3650 rupees, or 75 US dollars, per year.²⁷⁶ Other components of the CRSP included “conversion of dry latrines to water-pour flush toilets, construction of village sanitary complexes for women, setting up sanitary marts and production centers” to provide materials for constructing facilities, and creating awareness and health education.²⁷⁷ The CRSP provided large subsidies for construction of sanitation facilities in the community and in individual households.²⁷⁸ The government saw the provision of sanitation materials and services as a responsibility of the states and Gram Panchayats,²⁷⁹ “the lowest tier of elected rural local government.”²⁸⁰

In the fifteen years of its existence, the CRSP did not significantly improve sanitation access.²⁸¹ Rural sanitation grew only 1% every year through the 1990s.²⁸² In addition, the improved access was attributed to self-motivating factors instead of the subsidies offered under the CSRSP.²⁸³ A 1998 study by the Indian Institute of Mass Communication found that only 2% of those who received subsidies under the CRSP found the subsidy to be the motivating factor in constructing a personal toilet.²⁸⁴ In an effort to improve the ineffective program, the government restructured the CRSP into the Total Sanitation Campaign.²⁸⁵

273. *India: Unrealistic Approach Hampers Rural Sanitation Programme*, IRC INT’L WATER AND SANITATION CENTER, <http://www.irc.nl/page/35966> (last updated June 1, 2007).

274. *Central Rural Sanitation Programme*, *supra* note 14.

275. *Id.*

276. *Poverty Line*, iWATCH, http://www.wakeupcall.org/administration_in_india/poverty_line.php# (last visited Oct. 18, 2011).

277. *Central Rural Sanitation Programme*, *supra* note 14.

278. Benny George, *Nirmal Gram Puraskar: A Unique Experiment in Incentivising Sanitation Coverage in Rural India*, 16 INT’L J. OF RURAL STUD. 32 (2009), available at <http://www.indiaenvironmentportal.org.in/files/Nirmal%20Gram%20Puraskar.pdf>

279. INDIA COUNTRY PAPER, *supra* note 60, at 4.

280. *Community-Led Total Sanitation in Rural Areas: An Approach that Works*, WATER AND SANITATION PROGRAM, 8 (Feb. 2007), http://esa.un.org/iys/docs/san_lib_docs/WSP-Community%20Led.pdf [hereinafter WSP].

281. FEELING THE PULSE, *supra* note 263, at 6.

282. INDIA COUNTRY PAPER, *supra* note 60, at 4.

283. FEELING THE PULSE, *supra* note 263, at 18.

284. *Id.* at 18

285. TSC GUIDELINES, *supra* note 15, at 2.

3. *Total Sanitation Campaign*

India introduced the Total Sanitation Campaign (TSC) in April 1999.²⁸⁶ The government moved away from providing subsidies for the construction of toilets under the Central Rural Sanitation Programme and instead developed a community-led and people-centered program.²⁸⁷ The objective of the TSC is to achieve an end to open defecation and complete sanitation coverage by the year 2012, three years before the Millennium Development Goal must be met.²⁸⁸ In order to facilitate these objectives, the TSC calls for the construction of toilets not only in individual households, but also in schools and daycare centers.²⁸⁹ It obligates the state to develop community-managed sanitation systems.²⁹⁰ Instead of a supply-driven approach under the CRSP, which focuses solely on the construction of toilets, the TSC implements a demand-driven approach, which emphasizes education and awareness.²⁹¹ The theory is that education and awareness will create a demand for improved sanitation, thus motivating communities to pursue greater sanitation access and cleanliness.²⁹² The government recognized that sanitation coverage could not be achieved with just increased supply; there must be a total behavior and usage change.²⁹³

4. *Nirmal Gram Puraskar*

An added incentive to the TSC is the Nirmal Gram Puraskar (NGP), or National Clean Village Award,²⁹⁴ established in October 2003.²⁹⁵ In order to be eligible for the cash award, the applicant must meet all of the requirements.²⁹⁶ These include achieving the objectives for all components of the TSC project, ensuring total access to sanitation, providing separate sanitation facilities for boys and girls in schools, encouraging cleanliness, and striving for household garbage disposal and drainage systems.²⁹⁷ The requirements also call for an end to open defecation by adopting bans on the practice and imposing penalties for violations.²⁹⁸ If all eligibility requirements are met, the President of India presents

286. Bonu & Kim, *supra* note 269, at 26.

287. TSC GUIDELINES, *supra* note 15, at 2.

288. *Id.*

289. *Id.*

290. *Id.* at 2-3.

291. FEELING THE PULSE, *supra* note 263, 19.

292. *Id.*

293. *Id.*

294. Aditya Malaviya, *An End to Daily Humiliation*, UNICEF, http://www.unicef.org/india/reallives_5112.htm (last visited Oct. 20, 2011)

295. NGP GUIDELINES, *supra* note 16, at 1.

296. *Id.*

297. *Id.* at 1-2.

298. *Id.*

the award and cash prize to the applicant in an annual ceremony.²⁹⁹ As of 2007, the NGP has been awarded to 4,945 Gram Panchayats and 14 Blocks,³⁰⁰ which are “an intermediate tier of elected rural local government.”³⁰¹

5. *Criticisms of the Total Sanitation Campaign and the Nirmal Gram Puraskar*

Although India has displayed its commitment to improving sanitation through its various five-year plans and national programs, a large number of Indians still lack access to basic sanitation facilities and services.³⁰² India’s Planning Commission issued a Mid-Term Appraisal of the Eleventh Five Year Plan which boasts of impressive acceleration towards total sanitation with the launch of the Total Sanitation Campaign and the Nirmal Gram Puraskar.³⁰³ According to the report, 27.5 million individual household latrines have been constructed.³⁰⁴ Coverage of rural schools has increased from 30% in 2007 to 76% in 2009.³⁰⁵ Even with such impressive achievements, the Planning Commission noted some “significant areas of concern.”³⁰⁶

The lure of obtaining the NGP prize has fueled competition among the states, resulting in a race to construct toilets without concern for quality.³⁰⁷ Essentially, it has regressed from the demand-driven approach touted in the TSC to the supply-driven approach that failed under the CRSP.³⁰⁸ The quality of the latrine ultimately affects whether or not it will be used.³⁰⁹ According to WaterAid India, “[q]uality of construction of toilets is emerging as one of the critical factors in ensuring usage and sustained behaviour change.”³¹⁰ A poorly constructed toilet can result in a bad smell and mosquitoes, creating reluctance to actually use the facility.³¹¹ In a 2008 study conducted by UNICEF and The Action Resource Unit (TARU), out of the 162 Gram Panchayats awarded the NGP, 4% were actually

299. George, *supra* note 278, at 3.

300. *Id.*

301. WSP, *supra* note 280, at 8.

302. INDIA’S SANITATION FOR ALL, *supra* note 209, at 10.

303. GOV’T OF INDIA PLANNING COMM’N, MID-TERM APPRAISAL ELEVENTH FIVE YEAR PLAN 268 (2011), available at http://www.planningcommission.gov.in/plans/mta/11th_mta/chapterwise/Comp_mta11th.pdf.

304. *Id.*

305. *Id.* at 268-69.

306. *Id.* at 269.

307. *Id.*

308. *Id.* at 271.

309. See FEELING THE PULSE, *supra* note 263, at 22.

310. *Id.*

311. *Id.*

open defecation free.³¹² Further, in Gram Panchayats claiming 100% toilet coverage, only 63% reported actually using the facilities.³¹³

The lack of usage resulting from the poor quality of the constructed facilities highlights the overarching problem of sustainability.³¹⁴ The Planning Commission recognized sustainability as an issue stemming from the lack of behavior change.³¹⁵ It is not enough simply to provide toilets; individuals must actually use the toilets in order to effect a lasting change for the country.³¹⁶ Along with poor quality, several other factors dissuade individuals from using a latrine.³¹⁷ First, local governments and communities may fail to provide for maintenance which includes cleaning and pit emptying.³¹⁸ Individuals are less likely to use a facility that is unclean and smells.³¹⁹ There may also be insufficient mechanisms in place to empty latrines when they are full.³²⁰ An unpleasant or unusable latrine drives the individual to continue practicing open defecation.³²¹ Second, individuals may choose not to use the newly constructed latrines simply because of habit.³²² Although it may be acknowledged that open defecation leads to disease, this may not be enough to trigger a change in habit, especially in cases where open defecation provides adequate privacy and convenience.³²³

Another criticism of the TSC and NGP is the unreliability of statistics.³²⁴ It is sometimes difficult to accurately assess current sanitation conditions because statistics are often inconsistent or inflated.³²⁵ The government of India admits that the statistics regarding sanitation coverage do not account for the sanitary conditions of the toilet, its usage, or improved hygiene behaviors.³²⁶ The statistics of sanitation coverage in India vary considerably, with some sources claiming India is on track to meet the MDG target and others asserting India is significantly off track.³²⁷ The MDG target is based on the proportion of people

312. MID-TERM APPRAISAL, *supra* note 303, at 269.

313. GOV'T OF INDIA & UNICEF, A HANDBOOK FOR VILLAGE WATER HEALTH & SANITATION COMMITTEE: ACCELERATING RESULTS THROUGH CONVERGENCE 35 (Oct. 2010), *available at* http://www.ddws.nic.in/popups/vwsh_curve.pdf.

314. MIDTERM APPRAISAL, *supra* note 303, at 271.

315. INDIA COUNTRY PAPER, *supra* note 60, at 20.

316. TEARFUND, SANITATION AND HYGIENE IN DEVELOPING COUNTRIES: IDENTIFYING AND RESPONDING TO BARRIERS 15 (2007), *available at* http://www.tearfund.org/webdocs/website/campaigning/policy%20and%20research/sanitation%20scandal/MadagascarSan_web.pdf.

317. *Id.*

318. *Id.*

319. *Id.*

320. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 8.

321. *See* TEARFUND, *supra* note 316, at 15.

322. *Id.* at 15-16.

323. *Id.*

324. *Id.*

325. *Id.* at 10-11.

326. INDIA COUNTRY PAPER, *supra* note 60, at 6.

327. Bonu & Kim, *supra* note 269, at 1.

that lack access to sanitation.³²⁸ Even if this number can improve, there will still be a large number of people that will continue to live without the basic necessity of sanitation facilities.³²⁹ Instead of solely looking at the proportion of people with access to sanitation, the focus should be on the number of people defecating in the open.³³⁰ Six hundred and sixty-five million people in India still practice open defecation.³³¹ It does not matter how many toilets are constructed; as long as the people continue to practice open defecation, the country will continue to face the consequences of poor sanitation.³³² According to one Indian specialist, “[i]f the campaign is focused only on the building of latrines . . . there will always be people who are not reached, people who defecate in the open and who continue to pollute the water sources and spread disease.”³³³ High levels of latrine coverage, therefore, are simply not good enough.³³⁴

V. KEY ELEMENTS FOR IMPROVING SANITATION IN INDIA

A. *Recognition of the Right to Sanitation*

The first step in improving sanitation coverage is to nationally recognize sanitation as a human right.³³⁵ According to COHRE, “[w]ithout the recognition of the right of all people to gain access to safe, sustainable and sufficient, affordable water and sanitation services for domestic use . . . it will be almost impossible to deliver on the right to water and sanitation.”³³⁶ The U.N. Sub-Commission Guidelines even noted that “[s]tates should at all levels of government . . . [f]ormally recognize the right to water and sanitation in relevant laws and regulations.”³³⁷

There are several reasons for a national policy recognizing sanitation as a human right.³³⁸ First, recognition will ensure that access to sanitation is a “legal

328. UNDP, *supra* note 195.

329. FEELING THE PULSE, *supra* note 263, at 8.

330. See AJITH KUMAR, UPNEET SINGH, & MANU PRAKASH, MONITORING SYSTEMS FOR INCENTIVE PROGRAMS: LEARNING FROM LARGE-SCALE RURAL SANITATION INITIATIVES IN INDIA 3 (2010), available at <http://www.wsp.org/wsp/sites/wsp.org/files/publications/wsp-monitoring-systems-incentive-programs.pdf>.

331. Bonu & Kim, *supra* note 269, at 1.

332. See TEARFUND, *supra* note 316, at 14-15. This is not to say that construction of toilets should be ignored, this is a crucial element as well. Along with construction of facilities, there needs to be an improvement in the number of people actually using them.

333. *Id.* at 15.

334. *Id.* at 14-15.

335. See SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 34.

336. COHRE, AAAS, SDC, & UN-HABITAT, MANUAL ON THE RIGHT TO WATER AND SANITATION 35 (2007), available at http://www.cohre.org/sites/default/files/manual_on_the_right_to_water_and_sanitation_2008.pdf.

337. Draft Guidelines, *supra* note 23, ¶ 2.3.

338. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 5.

entitlement, rather than a charity or only a moral priority.”³³⁹ A legal entitlement provides the necessary foundation for holding the government and other responsible actors accountable for promoting access to sanitation.³⁴⁰ Furthermore, communities and other organizations will have a basis to demand improvements.³⁴¹ Second, recognizing a right to sanitation will create a focus on vulnerable and marginalized groups who have been ignored or discriminated against in the past.³⁴² If sanitation for all is a mandate, communities will be forced to divert focus from upper- and middle-income groups to those who need sanitation the most.³⁴³ Third, identifying sanitation as a right will increase information-sharing and participation in decision-making.³⁴⁴ “The right to water and sanitation can help empower and enable communities to organise themselves, seek and obtain information, and legitimately take part in and influence the outcomes of relevant decision-making processes.”³⁴⁵ In short, recognizing a right to sanitation can serve as a legal and political tool to be used to significantly improve access.³⁴⁶

The government of India admitted the need for a national sanitation policy during the South Asian Conference on Sanitation in Dhaka, Bangladesh held in 2003: “[t]he need for this is becoming increasingly apparent, and India will take the necessary steps towards formulation of a new National Sanitation Policy.”³⁴⁷ The government acknowledged that a national policy could encourage increased access to sanitation services.³⁴⁸ Yet, nearly nine years later India still has not developed an adequate national sanitation policy.³⁴⁹ India continues to rely on the Total Sanitation Campaign which is not a national policy, but merely a collection of guidelines for the states.³⁵⁰ India needs a national policy that “clearly articulates [the] Government of India’s policy and position” for the entire country.³⁵¹

339. *Why Recognising Water and Sanitation as Human Rights is Important*, RTS. TO WATER AND SANITATION, <http://www.righttowater.info/why-the-right-to-water-and-sanitation/>.

340. *Id.*

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 34.

347. GOV’T OF INDIA, TOWARDS TOTAL SANITATION AND HYGIENE: A CHALLENGE FOR INDIA 11 (2003), available at http://ddws.gov.in/popups/Country_Paper_on_SanitationOct_2003.pdf.

348. *Id.*

349. FEELING THE PULSE, *supra* note 263, at 21. *But see India: Official Launch of National Urban Sanitation Policy*, IRC (Dec. 8, 2008), available at <http://www.source.irc.nl/page/45608> (introducing the National Urban Sanitation Policy (NUSP) of 2008. The NUSP only addresses urban sanitation in the cities and fails to specifically address rural areas).

350. *Id.* at 52.

351. *Id.*

B. Clear Definition of the Right to Sanitation

Along with identifying access to sanitation as a right, it must be clearly defined.³⁵² The right to sanitation is often misunderstood as a result of different definitions.³⁵³ Definitions vary even among U.N. bodies, such as the Millennium Task Force, The Water Supply and Sanitation Collaborative Council, and the Joint Monitoring Programme of UNICEF and WHO.³⁵⁴ Definitions range from simple access to a toilet all the way to the services needed for the transportation, treatment, and disposal of excreta.³⁵⁵ Without a clear definition, there will be unrealistic expectations regarding what the right to sanitation entails.³⁵⁶

The Sub-Commission Guidelines on the Realization of the Right to Safe Drinking Water and Sanitation outlined several elements to include in the definition of sanitation.³⁵⁷ First, the definition should include safety regarding public health and the environment, meaning that the toilet must be hygienic and “prevent human, animal, and insect contact with excreta.”³⁵⁸ Second, a sanitation definition should include physical accessibility, meaning that it should be within the immediate vicinity of the household without risking the physical safety of the individual.³⁵⁹ Third, access to sanitation must be affordable, including construction of the facilities, as well as emptying and treatment of the excreta.³⁶⁰ Affordability also means that families do not have to compromise their ability to acquire other basic goods and services.³⁶¹ Fourth, the sanitation facilities must be of a culturally acceptable quality.³⁶² This takes into consideration the specific needs of women, acceptable washing facilities, and mechanized alternatives to the manual emptying of pit latrines.³⁶³

India includes a definition of sanitation in the Guidelines to the Total Sanitation Campaign: “[sanitation] connotes a comprehensive concept, which includes liquid and solid waste disposal, food hygiene, and personal, domestic, as well as environmental hygiene.”³⁶⁴ It goes on to mention that sanitation “expanded to include personal hygiene, home sanitation, safe water, garbage disposal, excreta disposal and waste water disposal.”³⁶⁵ There is no inclusion of a

352. See TEARFUND, *supra* note 316, at 10.

353. COHRE ET AL., *supra* note 336, at 19.

354. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 17.

355. *Id.*

356. COHRE ET AL., *supra* note 336, at 19.

357. *Draft Guidelines*, *supra* note 23, at 8-9.

358. *Id.* at 246.

359. *Id.*

360. *Id.*

361. *Id.*

362. *Id.*

363. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 20.

364. TSC GUIDELINES, *supra* note 15, ¶ 2.

365. *Id.*

requirement for safety, physical accessibility, affordability, or quality as suggested by the Sub-Commission Guidelines on the Realization of the Right to Safe Drinking Water and Sanitation.³⁶⁶ In order to clearly understand the right to sanitation and all its implications, India needs to clearly define the right.³⁶⁷

C. *Change Through Information*

1. *Need for Information*

The right to sanitation is inadequate without accessibility to information.³⁶⁸ General Comment 15 states that “accessibility includes the right to seek, receive and impart information concerning water issues.”³⁶⁹ Information ensures that sanitation is a legal entitlement, instead of charity, and gives persons the tools necessary to hold governments accountable for lack of access to adequate facilities or discriminatory policies.³⁷⁰ It is through information that individuals are given the opportunity to influence policy formation and effect change.³⁷¹ Not only is information used for policy development, it is also necessary to effect behavior change.³⁷² UNICEF states that “[f]amilies need to know about health-promoting practises and be motivated to adopt them. Even when modern facilities are not available, families can protect themselves from disease by disposing of excreta safely.”³⁷³ It matters little if there is access to a modern facility if families fail to wash their hands after using the facility or continue to believe that contact with excreta is not harmful.³⁷⁴ Families must be taught of the dangers of open defecation and poor hygiene in order to sustain behavior change.

While individuals and communities need information to understand their rights and advocate for the necessary changes, government needs information in order to properly implement those changes.³⁷⁵ It is difficult to develop solutions that will sufficiently address the needs and demands of the country without recent and reliable information on the present sanitation conditions.³⁷⁶ Especially important is encouraging information from the vulnerable and marginalized groups who face distinct obstacles.³⁷⁷ For instance, women are burdened by the

366. *See generally id.*

367. *See* COHRE ET AL., *supra* note 336, at 19.

368. *General Comment 15*, *supra* note 7, ¶ 12(c)(iv).

369. *Id.* Water issues are inextricably linked with the right to sanitation.

370. COHRE ET AL., *supra* note 336, at 75.

371. *Id.*

372. *See* UNICEF SANITATION FOR ALL, *supra* note 116, at 10.

373. *Id.*

374. *Id.*

375. TEARFUND, *supra* note 316, at 10-11.

376. *Id.*

377. COHRE ET AL., *supra* note 336, at 74.

indignity of a lack of privacy, as well as the risk of assault and rape.³⁷⁸ However, they are often not consulted about their specific needs³⁷⁹ or discouraged from speaking in public forums.³⁸⁰ The failure to consult the vulnerable and marginalized groups will lead to inappropriate solutions.³⁸¹ Information will increase community and individual involvement, which will bring experience, ideas, and alternative approaches.³⁸²

2. Hindrances of Information

Information is recognized as a central component of a sanitation program; however, it is sometimes challenging to communicate.³⁸³ Sanitation is considered a taboo topic that people refrain from discussing.³⁸⁴ Those in developing countries may feel embarrassment over the topic and therefore ignore it all together.³⁸⁵ Bindeshwar Pathak, responsible for starting Sulabh International Social Service Organization, states that “[c]ulturally, it was taboo in Indian society to talk about human excreta, night soil and all these things.”³⁸⁶ Other hindrances to the dissemination of information include poverty, illiteracy, and some cultural restrictions.³⁸⁷ The poor of communities will not have access to newspapers or television.³⁸⁸ Likewise, newspapers are useless to those who are not able to read.³⁸⁹ All of these factors act as a barrier which “can impair people’s capacity to access information.”³⁹⁰ It is imperative that information is accessible for all.³⁹¹

Even if information reaches the community level,

[s]tatistics make no impact on people, so that it is not enough to state to villagers that diarrhoea kills x thousands of children in their country every year . . . [t]he real challenge is to make clear the links between common illness and the practice of . . . open defecation.”³⁹²

378. SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 3.

379. *Id.* at 22.

380. COHRE ET AL., *supra* note 336, at 66.

381. *Id.* at 74.

382. *Id.* at 79.

383. TEARFUND, *supra* note 318, at 14-15.

384. INDIA COUNTRY PAPER, *supra* note 60, at 13.

385. THE HUMAN WASTE, *supra* note 53, at 20.

386. Gale, *supra* note 2.

387. COHRE ET AL., *supra* note 336, at 74.

388. *Id.* at 76.

389. *Id.*

390. *Id.* at 74.

391. *Id.* at 76.

392. TEARFUND, *supra* note 318, at 14-15.

Individuals must understand that the practice of open defecation has the potential to cause serious illnesses or else there will be no reason to change their behavior.³⁹³

3. *Recommendations to Improve Information*

India has recognized the importance of information and made it the central component of the Total Sanitation Campaign under its Information, Education and Communication (IEC) objective.³⁹⁴ It focuses on creating demand through awareness in order to establish sustainable sanitation and hygiene.³⁹⁵ Methods used include folk theater, radio, TV, and communication campaigns involving posters, pamphlets, and wall writings.³⁹⁶ The written messages of posters, pamphlets, and wall writings have not been found effective to inspire the adoption of sanitary practices.³⁹⁷ In Bihar, the twelfth largest state in India, the state executed fifty wall writings throughout the villages.³⁹⁸ However, the writings were placed in locations too small for the message to be read.³⁹⁹ It is important to use effective methods in distributing the information. One method that has proved to be particularly successful is door-to-door visits which provide “[i]nter-personal communication involving persuasive dialogues and discussions with individual members of the household.”⁴⁰⁰ Meera Devi of Kachpura, India has taken it upon herself to go “from home to home to talk about sanitation and cleanliness.”⁴⁰¹ This door-to-door method should be used more frequently in order to effectively communicate the need for improved sanitation and hygiene.

Furthermore, the impact on public health from open defecation is largely, ignored resulting in constructed toilets but no behavior change.⁴⁰² Instead of focusing on health consequences of poor sanitation, communities highlight the advantages of convenience, privacy, and dignity.⁴⁰³ These concerns are not sufficient to sustain any real behavior change for the entire community.⁴⁰⁴ There needs to be a greater emphasis on the link between sanitation and the impact on health in order to encourage a sustainable use of sanitation facilities.⁴⁰⁵

393. *Id.*

394. TSC GUIDELINES, *supra* note 15, ¶ 9(b).

395. *Id.*

396. FEELING THE PULSE, *supra* note 263, at 35.

397. *Id.*

398. *Id.* at 59.

399. *Id.*

400. *Id.* at 35.

401. Gale, *supra* note 2.

402. WSP, *supra* note 280, at 5.

403. *Id.*

404. *Id.*

405. FEELING THE PULSE, *supra* note 263, at 53.

This highlights another important aspect of information—emphasis on a need for collective behavior change, instead of merely individual behavior change.⁴⁰⁶ Until the entire community stops open defecation, there will be no real benefit from improved sanitation.⁴⁰⁷ Even if only a few households continue to defecate in the open, the entire community is still exposed to the health risks associated with poor sanitation.⁴⁰⁸ “[I]t is important to ensure collective action motivated primarily by the need to change behaviour.”⁴⁰⁹ The ultimate objective of information should be self-realization.⁴¹⁰ “Behaviour change can only be sustained if collective action is the result of self-realisation by the community of the adverse consequences of prevailing defecation practices.”⁴¹¹ In order to sustain a real behavior change, individuals must be informed of the consequences of failing to use sanitation facilities, especially the link between poor sanitation and public health.⁴¹²

D. Monitoring the Nirmal Gram Puraskar

Monitoring is essential to the effectiveness of the Nirmal Gram Puraskar and ultimately to sustaining improved sanitation.⁴¹³ Currently the government of India places the responsibility of long-term monitoring on the local governments.⁴¹⁴ The NGP has a multi-stage and multi-stakeholder verification process occurring at the district, state, and national levels.⁴¹⁵ Once the applicant is selected for the NGP award, the prize money is released to the state which then must release it to the awardees in two equal installments.⁴¹⁶ The first half of the prize money should be released immediately when the Gram Panchayat is selected for the award.⁴¹⁷ The second half may be released in six months after a random check by the state to verify sustained open defecation free status.⁴¹⁸ After this time, any monitoring is conducted by the state governments.⁴¹⁹ “Effective monitoring is the backbone of a successful incentive program. This ensures that only those local governments that actually deserve the award are recognized, maintaining the integrity and

406. WSP, *supra* note 280, at 2.

407. *Id.* at 5.

408. INDIA COUNTRY PAPER, *supra* note 60, at 16.

409. FEELING THE PULSE, *supra* note 263, at 36.

410. WSP, *supra* note 280, at 5.

411. FEELING THE PULSE, *supra* note 263, at 36.

412. WSP, *supra* note 280, at 4.

413. KUMAR, SINGH & PRAKASH, *supra* note 330, at 3.

414. INDIA COUNTRY PAPER, *supra* note 60, at 16.

415. KUMAR, SINGH & PRAKASH, *supra* note 330, at 4-6.

416. NGP GUIDELINES, *supra* note 16, at 5.

417. *Id.*

418. *Id.*

419. *Id.* at 7.

prestige of the awards program as a whole.”⁴²⁰ The government of India recognizes that the lack of monitoring of usage and sustainability of the toilets is a weakness of the Total Sanitation Campaign.⁴²¹ It also recognizes that the poor monitoring of the NGP poses a threat to improving sanitation.⁴²²

Although the statistics regarding the success of the NGP boast impressive numbers of villages with 100% coverage and open defecation free status, there are questions regarding whether this has actually been achieved and whether it is sustainable.⁴²³ The cash award in connection with the NGP serves as an incentive to “rush to win.”⁴²⁴ A WaterAid India study found that some states fabricated reports of sanitation coverage through over-reporting on the NGP application in the hopes that full coverage would be achieved in time for government verification.⁴²⁵ Failure to achieve the falsely reported numbers manipulates the NGP verification.⁴²⁶ Ultimately, this creates communities professing full sanitation coverage when in reality they are not fully covered.⁴²⁷ Of all of the applications for the NGP, only a few Gram Panchayats are actually nominated, meaning that many communities applying for the NGP are not really open-defecation-free.⁴²⁸ The rejection rate can be as high as 83.24%, as is the case in the state of Tripura.⁴²⁹ The high rate of rejection indicates “either there is a total absence of a proper system of monitoring at the district or state level while selecting the [Gram Panchayats] for nomination into NGP or the efficacy of such system (if any) is debatable.”⁴³⁰ India should stress the necessity of effective monitoring at the district and state level in order to combat the rush to win.⁴³¹

Another area of concern regarding the NGP is the sustainability of the achieved open-defecation-free status.⁴³² In the rush to win the NGP, states fail to stress behavior change and instead focus merely on constructing a toilet in each household.⁴³³ This leads to a high number of constructed toilets, but no significant improvement in the number of people still defecating in the open, a required element of the NGP.⁴³⁴ It is possible that after achieving the NGP, the community

420. KUMAR, SINGH & PRAKASH, *supra* note 330, at 3.

421. INDIA COUNTRY PAPER, *supra* note 60, at 15.

422. *Id.*

423. See FEELING THE PULSE, *supra* note 263, at 45.

424. *Id.*

425. *Id.*

426. *Id.* at 46.

427. *Id.*

428. *Id.* at 45.

429. *Id.*

430. *Id.*

431. *Id.*

432. *Id.*

433. *Id.* at 46.

434. See *id.*

could slip back into the practice of open defecation.⁴³⁵ With these looming concerns, it is crucial to evaluate the current monitoring process in order to effect sustained behavior change and ultimately a lasting open-defecation-free status.⁴³⁶ Any monitoring conducted by the state, district, or local community should take into consideration improved hygiene, toilet usage, and an end to open defecation.⁴³⁷ Furthermore, monitoring must ensure that the change is sustainable by guaranteeing functional facilities so that individuals will continue to use them.⁴³⁸ In order to monitor sustainability, the state government should continue to conduct random visits to Gram Panchayats that have already achieved the NGP.⁴³⁹ An effective monitoring system is crucial to the NGP incentive program.⁴⁴⁰ In order to protect the integrity of the NGP and effect a lasting improvement in sanitation, India must reevaluate its monitoring program.⁴⁴¹

VI. CONCLUSION

There may be a happy ending for Meera Devi and her family, who eventually obtained a loan in order to install a private latrine,⁴⁴² but the dangers associated with the lack of sanitation are still a horrific reality for more than half of India's population.⁴⁴³ Now is the time for India to make sanitation a priority. It is time to reduce the threat of death and disease as a result of the lack of adequate sanitation.⁴⁴⁴ It is time to protect the women and girls from the predators lurking in the darkness.⁴⁴⁵ It is time to remove this barrier to education and promote the future of the children.⁴⁴⁶ It is time to put an end to the economic drain of sanitation on families and the nation.⁴⁴⁷ It is time to take seriously the declining environment as a result of open defecation.⁴⁴⁸ It is time for change.

The international community has finally recognized the need for change and declared that access to adequate sanitation is a basic right that must be made available to all human beings.⁴⁴⁹ Although assenting to this proposition and

435. *Id.*

436. *Id.*

437. *Id.* at 53.

438. IANS, *President Stresses Rural Sanitation Drive*, THAIINDIAN NEWS (Mar. 23, 2011, 8:18 AM), http://www.thaindian.com/newsportal/health1/president-stresses-rural-sanitation-drive_100517577.html.

439. KUMAR, SINGH & PRAKASH, *supra* note 330, at 13.

440. *Id.* at 3.

441. *See id.*

442. Gale, *supra* note 2.

443. INDIA'S SANITATION FOR ALL, *supra* note 209, at 9.

444. *See id.*

445. *See* Gale, *supra* note 2.

446. *See id.*

447. *See* SANITATION: A HUMAN RIGHTS IMPERATIVE, *supra* note 25, at 6.

448. *See* Gale, *supra* note 2.

449. *See supra* Part III.

declaring its commitment to improving the sanitation crisis, India is still faced with a large number of individuals who continue to practice open defecation through either choice or a lack of an alternative.⁴⁵⁰ India has instituted a number of programs to respond to the sanitation crisis, but all have fallen short in instituting a sustainable change.⁴⁵¹ India must address the inadequacies of its national program if it ever hopes to instill a lasting improvement. The focus of any program must shift from toilet construction to toilet usage which will only result from increased accountability, a clear understanding of sanitation, greater information, and more effective monitoring.⁴⁵² Now is the time. "Sanitation for all is not only achievable, but necessary. There is a moral, civil, political and economic need to bring adequate sanitation to the global population."⁴⁵³

450. See INDIA'S SANITATION FOR ALL, *supra* note 209.

451. See MDG INDIA COUNTRY REPORT, *supra* note 13, at 84.

452. See INDIA'S SANITATION FOR ALL, *supra* note 209; FEELING THE PULSE, *supra* note 263, at 45-46; KUMAR, SINGH & PRAKASH, *supra* note 330.

453. UNU-INWEH, *supra* note 206.